



**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



October 15, 2002

Mr. Gene H. Muhlherr, Jr.
Islander East Pipeline Company, LLC
454 East Main Street, Rte. 1
Branford, CT 06405

Dear Mr. Muhlherr:

I am writing in response to your request for a federal coastal zone management consistency determination, received on April 15, 2002¹ regarding applications you have submitted to the Federal Energy Regulatory Commission (FERC) and the US Army Corps of Engineers (ACOE) to authorize the installation of a natural gas pipeline through Branford, CT and extending to Long Island, NY. You submitted a request to FERC for a Certificate of Public Convenience and Necessity (Docket No. CP01-384-000) under section 7(c) of the Natural Gas Act and submitted a permit application to the ACOE pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act (Application No. 200103091). Federal consistency is required for both federal permits by Section 307 of the Coastal Zone Management Act of 1972, as amended, Subpart D of 15 CFR 930 and Section II, Part VII(C) of State of Connecticut Coastal Management Program and Final Environmental Impact Statement.

Pursuant to the Coastal Zone Management Act Federal Consistency Regulations, 15 CFR 930, any federal license or permit activity affecting any coastal use or resource must be conducted in a manner consistent with the enforceable policies of any affected State's federally-approved Coastal Zone Management Program (CZMP). The Connecticut Department of Environmental Protection (Department) has determined that the activities, as proposed, are inconsistent with Connecticut's federally-approved CZMP and that at least one viable alternative exists which would reduce the environmental impacts of the proposed work. Therefore, the Department hereby objects to your consistency determination in accordance with 15 CFR 930.63 and to the issuance of the federal permits for the proposed work.

Please note that this letter relates only to your request for federal consistency and does not apply to applications submitted by Islander East Pipeline Company, LLC and pending before the Department for a Structures, Dredging & Fill and Tidal Wetlands permit and for a Section 401 Water Quality Certificate.

Project Summary

The proposed pipeline installation consists of upgrading existing interstate natural gas pipeline facilities in the upland areas of Cheshire, North Haven, East Haven, North Branford and Branford

¹Despite previous correspondence from the Department challenging the date of receipt of the consistency determination request, the Department will deem the concurrence request to have been received on April 15, 2002 in the form of a letter from Megan Brown of TRC, so as not to devote significant resources to a procedural issue.

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as well as the following proposed activities within the coastal area of the Town of Branford and within Long Island Sound:

- a.) placement of an at-grade 24" diameter pipeline within a number of small wetland areas both inland and tidal;
- b.) installation of a sub-grade 24" diameter pipeline at Juniper Point utilizing the horizontal directional drilling (HDD) method to a point approximately 3500 feet offshore in Long Island Sound;
- c.) excavation of a 20' deep x 250' wide x 300' long clamshell dredging exit-pit for the HDD-installed pipeline and sidecasting/stockpiling of such sediment within a 65' area on three sides of such pit;
- d.) installation of illuminated navigation warning signage placed atop temporary timber piles along the route where sediment is stockpiled below the waterline;
- e.) installation of a sub-grade 24" diameter pipeline by clamshell bucket dredge to create a 5' deep x 50' wide x 5808' long trench from the HDD exit-pit to a location at approximately milepost 12 and sidecasting/stockpiling of such sediment over 60' extending from the trench; and
- f.) installation of a sub-grade 24" diameter pipeline by utilizing a sub-sea plow which creates a 5' deep trench x 25' wide at the top of slope and sidecasts sediment mounds approximately 25' wide on either side, for approximately 9 miles from milepost 12 to the state line between Connecticut and New York.

Applicable Statutes and Resource Considerations

Due to the extensive and geographically wide-ranging scope of the proposed work, a number of the enforceable policies of the State's federally-approved Coastal Zone Management Program (CZMP) are applicable. The coastal resources which are in close proximity to the proposed work include: coastal waters, nearshore waters, offshore waters, islands, rocky shorefront, shellfish concentration areas, tidal wetlands, and general resources, as defined in Connecticut General Statutes (CGS) section 22a-93(7). Each of these resources is associated with a set of corresponding statutory resource policies that are enforceable policies of Connecticut's CZMP, CGS section 22a-92. In addition, specific coastal resources use policies (CGS section 22a-92) and adverse impacts (CGS section 22a-93(15)) are identified in the Connecticut CZMP and must be used in conjunction with the applicable resource policies. Appendix A provides a summary of the major policies applicable to the proposal and is appended hereto.

Based on a review of the application for consistency with the enforceable policies of Connecticut's CZMP, the Department has determined that the proposed work would cause significant adverse environmental impacts on coastal resources and would be inconsistent with the enforceable policies of the Connecticut CZMP. The proposed project will degrade water quality through the significant introduction of suspended solids; and degrade, irrevocably alter and permanently destroy essential

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shellfish habitat through alteration of the benthic environment. The siting of the non-water dependent pipeline through prime shellfish habitat would cause a permanent adverse impact to a water-dependent use by displacing a water-dependent use, shellfishing, with a non-water dependent use, natural gas transmission. Also, the proposed project will adversely impact tidal wetlands. In addition, the siting of this energy facility, while a national interest facility and resource as defined in the Connecticut CZMP, is inconsistent with the Connecticut CZMP because of the identified environmental impacts. These significant adverse impacts and inconsistencies with the Connecticut CZMP are further expanded upon below.

Water Quality

Water quality in Long Island Sound will be negatively impacted by pipeline installation through sediment suspension caused by dredging and plowing of the benthic environment and the subsequent short-term, in-water storage of dredge materials pending pipeline laying and backfilling. The Connecticut Water Quality Standards allow for temporary or short-term insignificant changes in water quality as a result of a discharge, such as dredging and plowing activities. However, the sidecasting of dredged sediments for approximately 1.2 miles and plowing for approximately 8.9 miles with the subsequent mounding of backfill material during the duration of pipeline installation is a longer-term disturbance that will have significant adverse impacts on benthic organisms and their habitat and possibly on water quality through sediment suspension. The exposed sediments are susceptible to the influences of wind and wave action. A disturbance caused by severe weather would be particularly devastating, as was experienced during the installation of the Iroquois pipeline off the Milford shoreline. On March 23, 1991 an open trench was partially filled and sediment was dispersed from 1640' to 3280'. While some marine species such as finfish, can readily leave areas of unsuitable water quality, other organisms, such as shellfish, would likely be killed by sedimentation. (See CGS section 22a-1 as referenced by CGS section 22a-92(a)(2); CGS section 22a(c)(2)(A); CGS section 22a-92(c)(1)(I); CGS section 22a-92(a)(1); CGS section 22a-359(a) as referenced by CGS section 22a-92(a)(2); CGS section 22a-92(a)(2); CGS section 22a-93(15)(A); and CGS section 22a-93(15)(G))

Shellfish Habitat

Shellfish found in the area of the proposed pipeline route include eastern oyster (*Crassostrea virginica*), hard clams (*Mercenaria mercenaria*), soft clams (*Mya arenaria*), blue mussels (*Mytilus edulis*), and channel whelk (*Busycon canaliculatum*). The eastern oyster is the most commercially valuable of these species. Naturally occurring oysters are found in hard substrate anywhere from the intertidal area to depths of approximately -35', while commercial oysters are grown in depths to -50'. The proposed pipeline would traverse approximately 4.2 miles to the -50 depth, resulting in the direct disturbance through trenching and plowing of approximately 45 acres of oyster habitat. An additional 1,990 acres of productive shellfish habitat may potentially be impacted by numerous anchor scars for a horizontal distance of approximately 2000' on each side of the pipeline route.

Oysters are extremely sensitive to substrate disturbance. Once a hard bottom has been disturbed, a soft sediment, referred to as the nephloide layer, covers the bottom. This softer sediment also fills in any depressions left on the disturbed bottom. It is not possible to restore the fine-grained cohesive sediment and the soft sediment is unsuitable for oysters. For this reason, on-site mitigation to restore oyster beds is not possible. Any reseeded effort would likely fail as there would be no firm, hard

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substrate for the spat (oyster larvae) to set and grow. Accordingly, the proposed pipeline will cause permanent damage to shellfish beds which cannot be mitigated and is inconsistent with the enforceable policies of the Connecticut CZMP. (See CGS section 22a-92(c)(2)(A); CGS section 22a-92(c)(1)(I); CGS section 22a-33 as referenced by CGS section 22a-92(a)(2); CGS section 22a-92(a)(1); CGS section 22a-359(a) as referenced by CGS section 22a-92(a)(2); CGS section 22a-383 as referenced by CGS section 22a-92(a)(2); CGS section 22a-1, as referenced by CGS section 22a-92(a)(2); CGS section 22a-93(17); CGS section 22a-93(15)(A); and CGS section 22a-93(15)(G))

Water-Dependent Use

Shellfish cultivation and harvesting is a water-dependent use. A water-dependent use is defined by statute as *"those uses and facilities which require direct access to, or location in, marine or tidal waters and which therefore cannot be located inland"*, CGS section 22a-93(16). The pipeline, as proposed, is sited through extensive shellfish grants, leased shellfish grounds and public shellfish lands. Much of the submerged lands through the proposed route that are not currently leased are productive marine habitat and constitute a significant area for potential expansion of the shellfish industry. Commercial shellfish aquaculture, transplant, and harvest operations by established seafood businesses are performed year round within and adjacent to the proposed project area. All of Branford Town waters and the offshore areas under the exclusive jurisdiction of the Department of Agriculture have been classified as Shellfish Growing Areas in accordance with the National Shellfish Sanitation Program and meet the requirements of the U.S. Food and Drug Administration.

As currently proposed, dredging and plowing would directly impact and permanently destroy 45 acres of leased or potentially leasable shellfish habitat. In addition to destroying the habitat, the resulting topographic irregularities may adversely affect the efficiency and safety of the operation and handling of harvesting equipment employed by the local seafood industry. By placing the pipeline through commercially important shellfish habitat and irrevocably altering that habitat, a water-dependent use will be permanently replaced with a non-water dependent use. Natural gas transmission via pipeline is a non-water dependant use because it can be located inland and does not require direct access to, or location in, marine or tidal waters. Such an extensive impact on future water-dependent development opportunities is significant and inconsistent with the enforceable policies of the Connecticut CZMP. (See CGS section 22a-359(a) as referenced by CGS section 22a-92(a)(2); CGS section 22a-92(c)(2)(A); CGS section 22a-92(c)(1)(I); CGS section 22a-92(a)(1); CGS section 22a-383 as referenced by CGS section 22a-92(a)(2); CGS section 22a-92(a)(3); CGS section 22a-92(b)(1)(A); CGS section 22a-93(17), and CGS section 22a-93(15)(G))

Tidal Wetlands

Installation of the proposed pipeline will physically alter and negatively impact two tidal wetland areas. These areas are more specifically identified by the applicant as wetland CT-A37 and pond CT-A21. The wetland is approximately 0.68 acres and the pond, 0.25 acres. While both areas will be impacted, the impacts to the pond are more significant. The proposed draining of the pond and subsequent installation of the pipeline may permanently degrade this wetland habitat and minimize its value as wildlife habitat. (See CGS section 22a-93(15)(H); CGS section 22a-92(b)(2)(E); CGS section 22a-33 as referenced by CGS section 22a-92(a)(2); CGS section 22a-92(a)(1); CGS section 22a-1, as referenced by CGS section 22a-92(a)(2); and CGS section 22a-93(15)(G))

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National Interest Facilities and Resources

Energy facilities are, by definition in CGS section 22a-93(14), facilities and resources which are in the national interest. However, each energy facility must still conform to all appropriate statutory standards. Given the significant adverse impacts to coastal resources discussed above, the proposed pipeline has not been properly planned and controlled and if installed, will adversely affect the quality of the environment in derogation of CGS section 16-50g. Finally, the Connecticut CZMP further defines facilities and resources which are in the national interest to include the protection of tidal wetlands and the restoration or enhancement of Connecticut's shellfish industry on an equal footing with energy facilities. This particular pipeline proposal by Islander East is inconsistent with the Connecticut CZMP because it does not meet applicable state environmental standards as discussed above. (See CGS section 16-50g, and CGS section 22a-92(a)(10))

Alternatives

In light of the significant adverse impacts of the proposed route and the inconsistencies with the enforceable policies of the CZMP, Department staff have considered alternatives which may avoid or minimize such adverse impacts. Staff have reviewed FERC's Final Environmental Impact Statement (FEIS), FERC/EIS-0143F dated August 2002. While the FEIS is problematic for a number of reasons, some of which are enumerated in the U.S.E.P.A. letter dated September 30, 2002 from Robert Varney to Magalie Salas, it does provide an alternative analysis. The FEIS describes in section 4.2.1 an option entitled "ELI System Alternative" which appears feasible, as it would meet essentially the same energy needs while eliminating some of the anticipated adverse impacts altogether and reducing others.

Specifically, the ELI System Alternative consists of an extension stemming from the Iroquois pipeline which is currently in place from Milford, CT to Northport, NY. By tapping into an existing pipeline at an offshore location, all nearshore impacts are eliminated. The FEIS indicates that this alternative, while providing a similar level of gas availability to Long Island, would minimize installation impacts by reducing the overall length of new pipe by 5.5 miles, and cross approximately 5205 fewer feet of shellfish leases. In short, concurring with our finding, the FEIS reads:

"Based on our environmental analysis, the ELI System Alternative is environmentally preferable to the proposed route because it reduces onshore and offshore impacts, except for emissions."²

Process For Override Request

Pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to Connecticut's coastal management program and the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request.

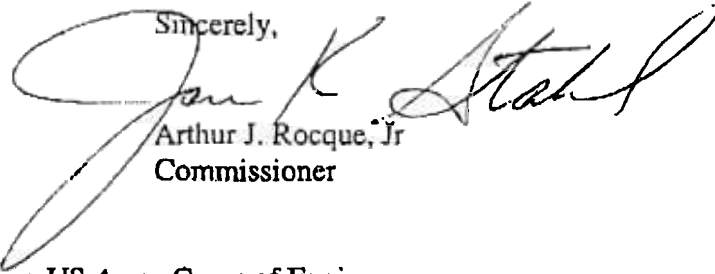
² See FERC/FEIS-0143F, Section 4.2.1., page 4-6

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Should you wish to discuss other less environmentally damaging alternatives to the proposed pipeline, I will be happy to arrange discussions with appropriate staff. If you have any questions regarding the information provided herein, please contact Mr. Charles Evans, Director of the Office of Long Island Sound Programs, at (860) 424-3034.

Sincerely,



Arthur J. Rocque, Jr.
Commissioner

AJR/PBF

cc: Colonel Thomas L. Koning, US Army Corps of Engineers
Magalie Salas, Secretary, Federal Energy Regulatory Commission
Douglas Brown, Director, Office of Ocean and Coastal Resource Management
David Kaiser, Office of Ocean and Coastal Resource Management
Bill O'Beirne, Office of Ocean and Coastal Resource Management
Richard Blumenthal, Office of the Attorney General
Joseph C. Reinemann, Islander East, LLC
Robert Varney, EPA Regional Administrator, Region 1

APPENDIX A**SUMMARY OF IMPORTANT APPLICABLE POLICIES****General Resources**

1. *"The general assembly hereby declares that the policy of the state of Connecticut is to conserve, improve and protect its natural resources and environment and to control air, land and water pollution in order to enhance the health, safety and welfare of the people of the state" C.G.S. section 22a-1 as referenced by C.G.S. section 22a-92(a)(2)*

Coastal Waters and Estuarine Embayments

2. *"To manage estuarine embayments so as to insure that coastal uses proceed in a manner that assures sustained biological productivity, the maintenance of healthy marine populations and the maintenance of essential patterns of circulation, drainage and basin configuration" CGS section 22a-92(c)(2)(A)*

Islands

3. *"To manage undeveloped islands in order to promote their use as critical habitats for those bird, plant and animal species which are indigenous to such islands or which are increasingly rare on the mainland" CGS section 22a-92(b)(2)(H)*
4. *"To maintain the value of undeveloped islands as a major source of recreational open space" CGS section 22a-92(b)(2)(H)*
5. *"To disallow uses which will have significant adverse impacts on islands or their resource components" CGS section 22a-92(b)(2)(H)*

Rocky Shorefront

6. *"To manage rocky shorefronts so as to insure that the development proceeds in a manner which does not irreparably reduce the capability of the system to support a healthy intertidal biological community; to provide feeding grounds and refuge for shorebirds and finfish and to dissipate and absorb storm and wave energies"*

Shellfish Concentration Area

7. *"To manage the state's fisheries in order to promote the economic benefits of commercial and recreational fishing, enhance recreational fishing opportunities, optimize the yield of all species, prevent the depletion or extinction of indigenous species, maintain and enhance the productivity of natural estuarine resources and preserve healthy fisheries resources for future generations" CGS section 22a-92(c)(1)(I)*

Tidal Wetlands

8. *"To preserve tidal wetlands and to prevent the despoliation and destruction thereof in order to maintain their vital natural functions" CGS section 22a-92(b)(2)(E)*

9. *"To encourage the rehabilitation and restoration of degraded tidal wetlands" CGS section 22a-92(b)(2)(E)*
10. *"In granting, denying or limiting any permit the commissioner or his duly designated hearing officer shall consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in Sections 22a-28 to 22a-35, inclusive" CGS section 22a-33 as referenced by CGS section 22a-92(a)(2)*

General Development

11. *"To insure that the development, preservation or use of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water resources to support development, preservation or use without significantly disrupting either the natural environment or sound economic growth" CGS section 22a-92(a)(1)*

Coastal Structures & Filling

12. *"The commissioner of environmental protection shall regulate dredging and the erection of structures and the placement of fill, and work incidental thereto, in the tidal, coastal, and navigable waters of the state waterward of the high tide line. Any decisions made by the commissioner pursuant to this section shall be made with due regard for indigenous aquatic life, fish and wildlife, the prevention or alleviation of shore erosion and coastal flooding, the use and development of adjoining uplands, the improvement of coastal and inland navigation for all vessels, including small craft for recreational purposes, the use and development of adjacent lands and properties and the interests of the state, including pollution control, water quality, recreational use of public water and management of coastal resources, with proper regard for the rights and interests of all persons concerned" CGS section 22a-359(a) as referenced by CGS section 22a-92(a)(2)*

Dredging

13. *"The commissioner of environmental protection shall regulate the taking and removal of sand, gravel and other materials from lands under tidal and coastal waters with due regard for the prevention and alleviation of shore erosion, the protection of necessary shellfish grounds and finfish habitats, the preservation of necessary wildlife habitats, the development of adjoining uplands, the rights of riparian property owners, the creation and improvement of channels and boat basins, the improvement of coastal and inland navigation for all vessels, including small craft for recreational purposes and the improvement, protection or development of uplands bordering upon tidal and coastal waters, with due regard for the rights and interests of all persons concerned" CGS section 22a-383 as referenced by CGS section 22a-92(a)(2)*

Energy Facilities

14. *"The legislature finds that power generating plants and transmission lines for electricity and fuels ... have had a significant impact on the ecology of the state of Connecticut; and that continued operation and development of such power plants, lines and towers, if not properly planned and controlled, could adversely affect the quality of the environment, the ecological, scenic, historic and recreational values of the state. The purposes of this chapter are: to provide for the balancing of the need for adequate and reliable public services at the lowest reasonable cost to*

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consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic and recreational values; to provide environmental quality standards and criteria for the location, design, construction and operation of facilities for the furnishing of public utility services at least as stringent as the federal environmental quality standards and criteria, and technically sufficient to assure the welfare and protection of the people of the state"
CGS section 16-50g

Water-dependent Uses

15. *"To give high priority and preference to uses and facilities which are dependent upon proximity to the water or on the shorelands immediately adjacent to marine and tidal waters."* CGS section 22a-92(a)(3)
16. *"To manage uses in the coastal boundary through existing municipal planning, zoning and other local regulatory authorities and through existing state structures, dredging, wetlands, and other state siting and regulatory authorities, giving highest priority and preference to water-dependent uses and facilities in shorefront areas."* CGS section 22a-92(b)(1)(A).

National Interest Facilities and Resources

17. *To insure that the state and the coastal municipalities provide adequate planning for facilities and resources which are in the national interest as defined in section 3 of this act and to insure that any restrictions or exclusions of such facilities or uses are reasonable. Reasonable grounds for the restriction or exclusion of a facility or use in the national interest shall include a finding that such a facility or use: (A) may reasonably be sited outside the coastal boundary; (B) fails to meet any applicable federal and state environmental, health or safety standard or (C) unreasonably restricts physical or visual access to coastal waters. This policy does not exempt any nonfederal facility in use from any applicable state or local regulatory or permit program nor does it exempt any federal facility or use from the federal consistency requirements of section 307 of the federal Coastal Zone Management Act.* CGS Sec. 22a-92(a)(10)

Coordination and Consistency

18. *"The general assembly finds that the growing population and expanding economy of the state have had a profound impact on the life-sustaining natural environment. The air, water, land and other natural resources, taken for granted since the settlement of the state, are now recognized as finite and precious. It is now understood that human activity must be guided by and in harmony with the system of relationships among the elements of nature. Therefore the general assembly hereby declares that the policy of the state of Connecticut is to conserve, improve and protect its natural resources and environment and to control air, land and water pollution in order to enhance the health, safety and welfare of the people of the state."* CGS section 22a-1, as referenced by CGS section 22a-92(a)(2)

Important Adverse Impact Definitions

19. *Characteristics & Functions of Resources: Degrading tidal wetlands, beaches and dunes, rocky shorefronts, and bluffs and escarpments through significant alteration of their natural characteristics or function.* CGS section 22a-93(15)(H)

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20. *Water-Dependency: Adverse impacts on future water-dependent development opportunities" and "adverse impacts on future water-dependent development activities" include but are not limited to (A) locating a non-water-dependent use at a site that (i) is physically suited for a water-dependent use for which there is a reasonable demand or (ii) has been identified for a water-dependent use in the plan of development of the municipality or the zoning regulations; (B) replacement of a water dependent use with a non-water-dependent use; and (C) siting of a non-water-dependent use which would substantially reduce or inhibit existing public access to marine or tidal waters. CGS section 22a-93(17)*
21. *Water Quality: Degrading water quality through the significant introduction into either coastal waters or groundwater supplies of suspended solids, nutrients, toxics, heavy metals or pathogens, or through the significant alteration of temperature, pH, dissolved oxygen or salinity. CGS section 22a-93(15)(A)*
22. *Wildlife, Finfish, Shellfish Habitat: Degrading or destroying essential wildlife, finfish or shellfish habitat through significant alteration of the composition, migration patterns, distribution, breeding or other population characteristics of the natural species or significant alteration of the natural components of the habitat. CGS section 22a-93 (15)(G)*